NEW YORK STATE | Office of the Medicaid Inspector General

FRANK T. WALSH, JR.
Acting Medicaid Inspector General

Audit of Claims for Personal Care Services

Final Audit Report
Audit #: 21-5481

New York Health Care Inc

Provider ID #: 01069272

NEW YORK STATE | Office of the Medicaid Inspector General

KATHY HOCHUL
Governor

FRANK T. WALSH, JR.
Acting Medicaid Inspector General

March 10, 2023

[redacted]
New York Health Care Inc
33 West Hawthorne Avenue, Floor 3
Valley Stream, NY 11580-6207

RE: Final Audit Report
Audit #: 21-5481
Provider #: 01069272

Dear [redacted]

This is the Office of the Medicaid Inspector General's (OMIG) Final Audit Report for New York Health Care Inc (Provider).

In accordance with Sections 30, 31 and 32 of the New York State Public Health Law, and Title 18 of the Official Compilation of the Codes, Rules and Regulations of the State of New York (NYCRR) Parts 504 and 517, OMIG performed an audit of Personal Care claims paid to the Provider from January 1, 2017 through December 31, 2019. The audit universe consisted of 43,334 claims totaling $7,355,951.48. The audit consisted of a random sample of 100 claims with Medicaid payments totaling $16,239.21 (Attachment A).

OMIG has attached the sample detail for the paid claims determined to be in error. This Final Audit Report incorporates consideration of any additional documentation and information presented in the Provider's February 7, 2023 response to the Draft Audit Report dated January 19, 2023. The adjusted point estimate overpaid is $283,503. The adjusted lower confidence limit of the amount overpaid is $38,768. We are 95% certain that the actual amount of the overpayment is greater than the lower confidence limit. This audit may be settled through repayment of the adjusted lower confidence limit of $38,768.

Your cooperation in this matter will be greatly appreciated. If you have any questions, please contact [redacted] or through email at [redacted] and refer to audit number 21-5481 in all correspondence.

[redacted]
Division of Medicaid Audit
Office of the Medicaid Inspector General

[redacted]
Attachments
Certified Mail Number: 7019-2280-0000-6788-2026
Return Receipt Requested

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Background, Objective, and Audit Scope

Background

The New York State Department of Health (DOH) is the single state agency responsible for the administration of the Medicaid program. As part of its responsibility as an independent entity within DOH, the Office of the Medicaid Inspector General (OMIG) conducts audits and reviews of various providers of Medicaid reimbursable services, equipment and supplies. These audits and reviews are directed at assessing provider compliance with applicable laws, regulations, rules and policies of the Medicaid program as set forth in New York Public Health Law, New York Social Services Law, the regulations of DOH (Titles 10 and 18 of the New York Codes Rules and Regulations), the regulations of the Office of Mental Hygiene (Title 14 of the New York Codes Rules and Regulations), the regulations of the Education Department (Title 8 of the New York Codes Rules and Regulations), DOH's Medicaid Provider Manuals and *Medicaid Update* publications.

Reimbursement under the Medicaid Program is available for personal care services in accordance with provisions of Article 36 of the Public Health Law. Personal care services must be provided by an agency that is licensed or certified to operate as a home care agency by the New York State DOH; and that has a contract with the local social services district in which the agency is licensed or certified to provide services.

Title 18 NYCRR Section 505.14, defines personal care services as some or total assistance with personal hygiene, dressing and feeding, nutritional and environmental support functions and health-related tasks. Such services must be essential to the maintenance of the recipient's health and safety within his or her own home, as determined by the social services district in accordance with the regulations of DOH; ordered by the attending physician; based on an assessment of the recipient's needs; provided by a qualified person in accordance with a plan of care; and supervised by a registered professional nurse. The specific standards and criteria for personal care services are outlined in Title 10 NYCRR Part 766 and Title 18 NYCRR Section 505.14. The MMIS Provider Manual for Personal Care Services also provides program guidance for claiming Medicaid reimbursement for personal care services.

Objective

The objective of this audit was to assess New York Health Care Inc's (Provider) adherence to applicable laws, regulations, rules and policies governing the New York State Medicaid program and to verify that:

- Medicaid reimbursable services were rendered for the dates billed;
- appropriate rate codes were billed for services rendered;
- patient related records contained the documentation required by the regulations; and,
- claims for payment were submitted in accordance with applicable rules and requirements.

Audit Scope

A review of Personal Care claims paid to the Provider by Medicaid for payment dates included in the period beginning January 1, 2017 and ending December 31, 2019, was completed.

The audit universe consisted of 43,334 claims totaling $7,355,951.48. The audit sample consisted of 100 claims totaling $16,239.21 (Attachment A).

Regulations of General Application

Each audit finding is supported by relevant regulations, policy statements and manuals. In addition, the audit findings in this audit are supported by regulations of general application to the Medicaid program. These regulations are provided below.

"By enrolling the provider agrees: (a) to prepare and to maintain contemporaneous records demonstrating its right to receive payment . . . and to keep for a period of six years from the date the care, services or supplies were furnished, all records necessary to disclose the nature and extent of services furnished and all information regarding claims for payment submitted by, or on behalf of, the provider . . . (e) to submit claims for payment only for services actually furnished and which were medically necessary or otherwise authorized under the Social Services Law when furnished and which were provided to eligible persons; (f) to submit claims on officially authorized claim forms in the manner specified by the department in conformance with the standards and procedures for claims submission; . . . (h) that the information provided in relation to any claim for payment shall be true, accurate and complete; and (i) to comply with the rules, regulations and official directives of the department." *18 NYCRR Section 504.3*

"Fee-for-service providers. (1) All providers . . . must prepare and maintain contemporaneous records demonstrating their right to receive payment under the medical assistance program. All records necessary to disclose the nature and extent of services furnished and the medical necessity therefor . . . must be kept by the provider for a period of six years from the date the care, services or supplies were furnished or billed, whichever is later. (2) All information regarding claims for payment submitted by or on behalf of the provider is subject to audit for a period of six years from the date the care, services or supplies were furnished or billed, whichever is later, and must be furnished, upon request, to the department . . . for audit and review." *18 NYCRR Section 517.3(b)*

"An overpayment includes any amount not authorized to be paid under the medical assistance program, whether paid as the result of inaccurate or improper cost reporting, improper claiming, unacceptable practices, fraud, abuse or mistake." *18 NYCRR Section 518.1(c)*

"The department may require repayment from the person submitting an incorrect or improper claim, or the person causing such claim to be submitted, or the person receiving payment for the claim." *18 NYCRR Section 518.3(a)*

"The department may require repayment for inappropriate, improper, unnecessary or excessive care, services or supplies from the person furnishing them, or the person under whose supervision they were furnished, or the person causing them to be furnished. . . . Medical care, services or supplies ordered or prescribed will be considered excessive or not medically necessary unless the medical basis and specific need for them are fully and properly documented in the client's medical record." *18 NYCRR Section 518.3(b)*

"Vendor payments for medical care and other items of medical assistance shall not be made unless such care or other items of assistance have been furnished on the basis of the appropriate authorization prescribed by the rules of the board and regulations of the department." *18 NYCRR Section 540.1*

"All bills for medical care, services and supplies shall contain: (1) patient name, case number and date of service; (2) itemization of the volume and specific types of care, services and supplies provided (including for a physician, his final diagnosis, and for drugs, the prescription filled); (3) the unit price and total cost of the care, services and supplies provided; . . . (8) a dated certification by the provider that the care, services and supplies itemized have in fact been furnished; that the amounts listed are due and owing . . . that such records as are necessary to disclose fully the extent of care, services and supplies provided to individuals under the New York State Medicaid program will be kept for a period of not less than six years from the date of payment . . . and that the provider understands that payment and satisfaction of this claim will be from Federal, State and local public funds and that he or she may be prosecuted under applicable Federal and State laws for any false claims, statements or documents, or concealment of a material fact provided . . ." *18 NYCRR Section 540.7(a)(1)-(3) and (8)*

Reimbursement under the Medicaid Program is available for personal care services in accordance with provisions of Article 36 of the Public Health Law. Personal care services must be provided by an agency that is licensed or certified to operate as a home care agency by the New York State DOH; and that has a contract with the local social services district in which the agency is licensed or certified to provide services.

Title 18 NYCRR Section 505.14, defines personal care services as some or total assistance with personal hygiene, dressing and feeding, nutritional and environmental support functions and health-related tasks. Such services must be essential to the maintenance of the recipient's health and safety within his or her own home, as determined by the social services district in accordance with the regulations of DOH; ordered by the attending physician; based on an assessment of the recipient's needs; provided by a qualified person in accordance with a plan of care; and supervised by a registered professional nurse. The specific standards and criteria for personal care services are outlined in Title 10 NYCRR Part 766 and Title 18 NYCRR Section 505.14. The MMIS Provider Manual for Personal Care Services also provides program guidance for claiming Medicaid reimbursement for personal care services.

Audit Findings

OMIG issued a Draft Audit Report to the Provider on January 19, 2023. This Final Audit Report incorporates consideration of any additional documentation and information presented in the Provider's February 7, 2023 response to the Draft Audit Report dated January 19, 2023. The attached Bridge Schedule (Attachment D) indicates any financial changes to the findings as a result of the Provider's response. A description of each finding, regulations, and the list of samples supporting each finding, appear below. Each sample may contain more than one error, and may be listed in more than one category of finding. A sample may only be disallowed once in an audit, however, each sample is subject to disallowance based on a single error.

Summary of Audit Findings

Error Description	Number of Errors
Missing Documentation of Tuberculosis Test or Follow-Up	6
Missing Certificate of Immunization	5
Failure to Complete Annual Performance Assessment	4
Failure to Complete Required Health Assessment	4
Missing Documentation of Hours Billed	3
Failure to Document Tasks	1
Nursing Supervision Visit Not Provided by a Registered Professional Nurse	1
Billed More Units Than Authorized	1

Audit Findings Detail

OMIG's review of Medicaid claims paid to the Provider from January 1, 2017 through December 31, 2019, identified 12 claims with at least one error, for a total sample overpayment of $1,220.03 (Attachment C).

1. Missing Documentation of Tuberculosis Test or Follow-Up

"(d) that a record of the following tests, examinations or other required documentation is maintained for all personnel who have direct patient contact:...(4) either tuberculin skin test or Food and Drug Administration (FDA) approved blood assay for the detection of latent tuberculosis infection, prior to assuming patient care duties and no less than every year thereafter for negative findings. Positive findings shall require appropriate clinical follow up but no repeat tuberculin skin test or blood assay..." *10 NYCRR Section 766.11(d)(4)*

In 6 instances pertaining to 3 patients, a personal care aide was allowed to care for patients prior to completion of a tuberculosis test or follow up. This finding applies to Sample #s 9, 19, 63, 70, 85, and 90.

2. Missing Certificate of Immunization

"(d) that a record of the following tests, examinations or other required documentation is maintained for all personnel who have direct patient contact: (1) a certificate of immunization against rubella...(2) a certificate of immunization against measles for all personnel born on or after January 1, 1957..." *10 NYCRR Section 766.11(d)*

In 5 instances pertaining to 3 patients, the personnel record of the aide providing care did not contain the required certificate of immunization. This finding applies to Sample #s 9, 19, 63, 70, and 79.

3. Failure to Complete Annual Performance Assessment

"All persons providing personal care services are subject to administrative and nursing supervision." *18 NYCRR Section 505.14(f)(1)*

"(k) that an annual assessment of the performance and effectiveness of all personnel is conducted including at least one in-home visit to observe performance,...."
10 NYCRR Section 766.11(k)

"Administrative supervision includes the following activities:...(j) evaluating the overall job performances of persons providing personal care services,..."
18 NYCRR Section 505.14(f)(2)(ii)(j)

In 4 instances pertaining to 2 patients, services were provided by a personal care aide who did not have an annual performance assessment. This finding applies to Sample #s 9, 19, 63, and 70.

4. Failure to Complete Required Health Assessment

"...the health status of all new personnel is assessed and documented prior to assuming patient care duties..." *10 NYCRR Section 766.11(c)*

"...an annual, or more frequent if necessary, health status assessment to assure that all personnel are free from any health impairment that is of potential risk to the patient, family or to employees or that may interfere with the performance of duties;..." *10 NYCRR Section 766.11(d)(5)*

In 4 instances pertaining to 2 patients, the personnel record of the aide(s) providing care did not contain the required health assessment(s). This finding applies to Sample #s 9, 19, 63, and 70.

5. Missing Documentation of Hours Billed

"By enrolling the provider agrees: (a) to prepare and to maintain contemporaneous records demonstrating its right to receive payment under the medical assistance program and to keep for a period of six years... all records necessary to disclose the nature and extent of services furnished..." *18 NYCRR Section 504.3(a)*

"(8) a dated certification by the provider that the care, services and supplies itemized have in fact been furnished.....that such records as are necessary to disclose fully the extent of care, services and supplies provided to individuals under the New York State Medicaid program will be kept for a period of not less than six years...." *18 NYCRR Section 540.7(a)(8)*

"No payment to the provider shall be made for authorized service unless such claim is supported by the documentation of the time spent in provision of service for each individual patient. Such documentation must be maintained by the provider pursuant to section 540.7(a)(8). . . ." *18 NYCRR Section 505.14(h)(1)*

"...the delivery of each service is documented in the clinical record;..." *10 NYCRR Section 766.2(a)(2)*

In 3 instances pertaining to 3 patients, the patient record did not document the personal care services billed. This finding applies to Sample #s 44, 75, and 95.

6. Failure to Document Tasks

"By enrolling the provider agrees: (a) to prepare and to maintain contemporaneous records demonstrating its right to receive payment under the medical assistance program and to keep for a period of six years ...all records necessary to disclose the nature and extent of services furnished...." *18 NYCRR Section 504.3(a)*

"(8) a dated certification by the provider that the care, services and supplies itemized have in fact been furnished.....that such records as are necessary to disclose fully the extent of care, services and supplies provided to individuals under the New York State Medicaid program will be kept for a period of not less than six years...." *18 NYCRR Section 540.7(a)(8)*

"Fee-for-service providers. (1) All providers, who are not paid at rates or fees approved by the State Director of the Division of the Budget based upon their allowable costs of operation but

who are paid in accordance with the rates, fees and schedules established by the department, must prepare and maintain contemporaneous records demonstrating their right to receive payment under the medical assistance program...." *18 NYCRR Section 517.3(b)(1)*

"No payment to the provider shall be made for authorized service unless such claim is supported by the documentation of the time spent in provision of service for each individual patient. Such documentation must be maintained by the provider pursuant to section 540.7(a)(8)..."
18 NYCRR Section 505.14(h)(1)

"... the delivery of each service is documented in the clinical record;"
10 NYCRR Section 766.2(a)(2)

In 1 instance personal care tasks were not documented. This finding applies to Sample # 16.

7. Nursing Supervision Visit Not Provided by a Registered Professional Nurse

"Nursing supervision must be provided by a registered professional nurse who: (a) is licensed and currently certified to practice as a registered professional nurse in New York State;..."
18 NYCRR Section 505.14(f)(3)(iii)(a)

"Personal care services are defined as assistance with personal hygiene, dressing and feeding, the performance of incidental household tasks and environmental and nutritional support services essential to the maintenance of a patient's health and safety within his/her own home, ordered by the attending physician, provided in accordance with a plan of care, and supervised by a registered professional nurse." *NYS Medicaid Program Personal Care Services Program Manual Policy Guidelines, Version 2005-1, Section IV*

In 1 instance nursing supervision visits were not provided by a registered nurse. This finding applies to Sample # 85.

8. Billed More Units than Authorized

"When services are authorized, the local social services department shall provide the agency or person providing services, the patient receiving the services, and the agency or individual supervising the services, with written information about the services authorized, including the functions and tasks required and the frequency and duration of the services."
18 NYCRR Section 505.14(b)(5)(v)

"All services provided shall be in accordance with the authorization. No change in functions or tasks, or hours of services delivered shall be made without notification to, and approval of, the social services district." *18 NYCRR Section 505.14(b)(5)(vi)*

"All services must be provided in accordance with the prior authorization. Reauthorization by the local social services district, or its designee, is required before any change in service function or hours of service, or substitutions of Providers or Provider agencies."
NYS Medicaid Program Personal Care Services Program Manual Policy Guidelines, Version 2005-1, Sections II

In 1 instance PCA units were billed in excess of those authorized. This finding applies to Sample # 11.

Repayment Options

In accordance with 18 NYCRR Part 518, which regulates the collection of overpayments, your repayment options are described below.

Option #1: Make a full payment by check, money order, or OMIG's Online Payment Portal within 20 days of the date of the Final Audit Report.

- The check should be made payable to the New York State Department of Health, should include the audit number on the memo line, and be mailed with the attached remittance advice to:

New York State Office of the Medicaid Inspector General
Bureau of Collections Management
800 North Pearl Street
Albany, New York 12204
[redacted]

- If you elect to pay electronically through OMIG's Online Payment Portal, please visit [redacted] or contact OMIG's Bureau of Collections Management by telephone or email, at the above number or address.

Option #2: Enter into a repayment agreement with OMIG. If your repayment terms exceed 90 days from the date of the Final Audit Report, recoveries of amounts due are subject to interest charges at the prime rate plus 2%. OMIG's acceptance of a repayment agreement is based on your repaying the Medicaid overpayment as agreed. OMIG will adjust the rate of recovery, or require payment in full, if your unpaid balance is not being repaid as agreed. If you wish to enter into a repayment agreement, please contact the Bureau of Collections Management within 20 days, by telephone or email, as provided above.

Should you fail to select a payment option above within 20 days of the date of this Report, OMIG will initiate recoupment by withholding all or a part of your payments otherwise payable, in accordance with 18 NYCRR 518.6. Additionally, OMIG reserves the right to use any remedy allowed by law to collect the amount due. Pursuant to the State Finance Law Section 18(5), a collection fee equal to twenty two percent (22%) of the amount due, including interest, may be added to the amount owed.

Hearing Rights

If you choose not to settle this audit through repayment of the adjusted lower confidence limit, you have the right to challenge these findings by requesting an administrative hearing where OMIG would seek and defend the adjusted point estimate of $283,503. As allowed by state regulations, you must make your request for a hearing, in writing, within sixty (60) days of the date of this report to:

General Counsel
Office of Counsel
New York State Office of the Medicaid Inspector General
800 North Pearl Street
Albany, NY 12204

Questions regarding the request for a hearing should be directed to Office of Counsel, at [redacted]

In accordance with 18 NYCRR Section 519.18(a), "The issues and documentation considered at the hearing are limited to issues directly relating to the final determination. An appellant may not raise issues regarding the methodology used to determine any rate of payment or fee, nor raise any new matter not considered by the department upon submission of objections to a draft audit or notice of proposed agency action."

If a hearing is held, you may have a person represent you or you may represent yourself. If you choose to be represented by someone other than an attorney, you must supply along with your hearing request a signed authorization permitting that person to represent you at the hearing; you may call witnesses and present documentary evidence on your behalf.

For a full listing of hearing rights please see 18 NYCRR Part 519.

Contact Information

Office Address:

New York State
Office of the Medicaid Inspector General
Division of Medicaid Audit
259 Monroe Avenue, Room 312
Rochester, New York 14607

Mission

The mission of the Office of the Medicaid Inspector General is to enhance the integrity of the New York State Medicaid program by preventing and detecting fraudulent, abusive, and wasteful practices within the Medicaid program and recovering improperly expended Medicaid funds while promoting high quality patient care.

Vision

To be the national leader in promoting and protecting the integrity of the Medicaid program.

NEW YORK STATE | Office of the Medicaid Inspector General

REMITTANCE ADVICE

[redacted]
New York Health Care Inc
33 W Hawthorne Ave Fl 3
Valley Stream, NY 11580-6207

Provider ID #: 01069272

Audit #: 21-5481

Amount Due: $38,768

Audit Type
- ☐ **Managed Care**
- ☒ **Fee-for-Service**
- ☐ **Rate**

Checklist

1. To ensure proper credit, please enclose this form with your check.
2. Make checks payable to: New York State Department of Health.
3. Record the audit number on your check.
4. Mail the check to:

New York State Office of the Medicaid Inspector General
Bureau of Collections Management
800 North Pearl Street
Albany, New York 12204
[redacted]

If you elect to pay electronically through OMIG's Online Payment Portal, please visit [redacted] or contact OMIG's Bureau of Collections Management by telephone or email, at the above number or address.